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6 UNITED STATES  
7 ENVIRONMENTAL PROTECTION AGENCY  
8 REGION 9

9 In The Matter Of: )

10 POLY-CARB, INC. )  
11 WELLS, NEVADA )

ORDER

88-01

12 MONTANA REFINING COMPANY, )

13 Respondent )

14 PROCEEDING UNDER SECTION 106(a) )  
15 OF THE COMPREHENSIVE ENVIRONMENTAL )  
16 RESPONSE, COMPENSATION AND LIABILITY )  
17 ACT OF 1980 (42 U.S.C. 9606(a)) )

18 I. JURISDICTION

19 The following Order is issued on this date to MONTANA  
20 REFINING COMPANY ("Respondent") pursuant to Section 106(a) of  
21 the Comprehensive Environmental Response, Compensation and Liability  
22 Act of 1980 (CERCLA), 42 U.S.C. 9606(a) as amended by the Superfund  
23 Amendments and Reauthorization Act of 1986 (SARA), Pub. L.  
24 No. 99-499, by authority delegated to the undersigned by the  
25 Administrator of the United States Environmental Protection  
26 Agency ("EPA"). Notice of the issuance of this Order has  
27 heretofore been given to the State of Nevada.

28 The Director, Toxics and Waste Management Division, EPA  
Region 9 has determined that there may be an imminent and

1 substantial endangerment to the public health or welfare or  
2 the environment because of an actual or threatened release  
3 of hazardous substances from a facility in Wells, Nevada formerly  
4 operated by Poly-Carb, Inc. These hazardous substances were sent  
5 to the Poly-Carb, Inc. facility by Respondent.

6 This Order directs Respondent, Montana Refining Company to  
7 undertake actions to protect the public and the environment from  
8 this endangerment.

## 9 II. FINDINGS OF FACT

### 10 A. Background

11 1. On August 21, 1984 and September 26, 1984, Respondent  
12 sent shipments of phenolic caustic containing phenol and cresol  
13 to a purported waste conversion facility operated by Poly-Carb,  
14 Inc ("Poly-Carb") in Wells, Nevada for treatment or disposal.

15 2. Poly-Carb, Inc's purported waste conversion facility site  
16 is located off US Highway 93 approximately one-half mile north of  
17 I-80 in Wells, Elko County, Nevada ("the facility").

18 3. Montana Refining Company is a limited partnership with its  
19 headquarters in Black Eagle, Montana.

20 4. On May 27, 1985 between 7200 and 9000 gallons of a solution  
21 containing phenol and cresol spilled from a holding tank at the  
22 facility and contaminated approximately 1500 cubic yards of soil  
23 adjacent to and under a building.

24 5. Between June 3-10, 1985, Poly-Carb excavated some of the  
25 contaminated soil and placed it in two trenches lined with visqueen  
26 plastic for temporary storage. The company collected samples of  
27 the contaminated soil. Analysis of these samples by the University  
28 of Nevada, Reno biochemistry department detected the following

1 concentrations of phenol and cresol in the samples:

	phenol	cresol (in ppm)
2 oil layer	40,900	36,200
3 soil	723	130

4 6. On June 7, 1985, Nevada Division of Environmental Protection  
5 ("DEP") issued Poly-Carb a "Finding of Alleged Violation" and  
6 "Order" charging Poly-Carb with operating a hazardous waste  
7 facility without a permit, illegal waste disposal, and unlawful  
8 discharge of a pollutant to ground water. The Order required  
9 Poly-Carb to submit an acceptable sampling plan and site security  
10 measures by June 21, 1985.

11 7. On July 12, 1985, DEP issued a "Finding of Alleged  
12 Violation, Proposed Stipulated Civil Penalty, and Order" after  
13 determining that Poly-Carb had failed to comply fully with the  
14 earlier order. This order required Poly-Carb to complete cleanup  
15 by August 14, 1985. Due to the inadequate response by Poly-Carb,  
16 the DEP requested EPA assistance in November of 1985.

17 8. On March 25, 1986, Poly-Carb filed for bankruptcy in  
18 Eugene, Oregon without implementing any further site mitigation  
19 activities.

20 9. In June of 1987, the EPA began clean-up of the contaminated  
21 soil on the basis of EPA Immediate Removal Action Memorandum - Wells  
22 Site, Wells, NV dated May 14, 1987. At that time EPA had no  
23 information as to the identity of any potentially responsible  
24 party other than Poly-Carb, Inc and its principal Mike Wilwerding.  
25 In September of 1987, EPA learned that Respondent had sent hazardous  
26 materials to Poly-Carb. EPA has no information that any other  
27 person sent any hazardous materials to the facility.

28 10. The EPA has designated an On-Scene Coordinator ("OSC")

1 for the facility, pursuant to 40 C.F.R. Part 300.

2 B. Endangerment

3 11. Phenol and cresol are toxic chemicals which have a wide  
4 range of health effects, varying from severe skin effects to  
5 systemic damage to the liver and kidneys. Phenol also affects  
6 mucous membranes and causes digestive disturbances. Phenol is a  
7 suspected co-carcinogen.

8 12. EPA has found to date approximately 1500 cubic yards of  
9 phenol and cresol-contaminated soil along with approximately 500  
10 gallons of liquid containing phenol and cresol stored in abandoned  
11 tanks on-site. Phenol levels in the trench soil have ranged up to  
12 2300 ppm and cresol levels have ranged up to 1480 ppm. A sample  
13 of residual material in one tank contained 18,000 ppm phenol and  
14 14,000 ppm cresol. During the Preliminary Assessment of November  
15 1986, EPA observed that the condition of the thin visqueen plastic  
16 lining the trench had deteriorated and was torn in several areas.

17 13. Phenol and cresol are both very mobile in alkaline soils,  
18 which are found on-site. Shallow ground water occurs at 25 feet  
19 below the site. The phenol and cresol spilled onto the soil at  
20 the facility therefore, pose a substantial threat to groundwater.

21 14. There is also potential for humans to contact these  
22 contaminants in the soil and in the tanks. Both chemicals are  
23 extremely toxic through the dermal route of exposure.

24 15. Population at risk: The City of Wells relies entirely on  
25 ground water for its water supply. Both municipal wells are  
26 downgradient from the site.

27 III. CONCLUSIONS OF LAW

28 1. Montana Refining Co. is a "person" as defined in Section

1 101(21) of CERCLA, 42 U.S.C. §9601(21).

2 2. The Poly-Carb, Inc. facility, located in Wells, Nevada is  
3 a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C.  
4 §9601(9).

5 3. Montana Refining Company generated the phenolic caustic  
6 containing phenol and cresol and arranged for the transport of  
7 the phenolic caustic to the facility for treatment or disposal  
8 and is a "responsible" party as provided in Section 107(a)(3) of  
9 CERCLA, 42 U.S.C. §9607(a)(3).

10 4. Phenol and cresol are "hazardous substances" as defined  
11 in Section 101(14) of CERCLA, 42 U.S.C.

12 5. There has been an actual "release", as defined in Section  
13 101(22) of CERCLA, 42 U.S.C. §9601(22), of cresol and phenol into  
14 the environment.

15 IV. DETERMINATIONS

16 Based upon the foregoing Findings of Fact and Conclusions  
17 of Law, the Director, Toxics and Waste Management Division, EPA  
18 Region 9 has made the following determinations:

19 1. The release and threatened release of hazardous substances  
20 and pollutants or contaminants from the facility may present an  
21 imminent and substantial endangerment to public health and welfare  
22 and the environment.

23 2. In order to prevent or mitigate immediate and signifi-  
24 cant risk of harm to human health and the environment, it is  
25 necessary that removal action continue to be taken to contain and  
26 prevent the release and potential release of hazardous substances,  
27 pollutants or contaminants from the facility.

28 3. The response measures ordered herein are consistent

1 with the National Contingency Plan, 40 C.F.R. Part 300.

2 4. Respondent is responsible for conducting the actions  
3 ordered herein, which are necessary to protect human health and  
4 the environment.

5 V. ORDER

6 Based upon the foregoing Findings of Fact, Conclusions of  
7 Law and Determinations, Respondent is hereby ordered and directed  
8 to implement the following measures:

9 1. Within five (5) days of the effective date of this Order,  
10 Respondent shall submit to EPA a written proposal with a schedule  
11 for the removal of all drums of containing hazardous substances  
12 from the facility.

13 2. Within five (5) days of EPA approval of the proposal  
14 for drum removal, Respondent shall begin implementation of the  
15 proposal. Respondent shall fully implement the drum removal  
16 proposal as approved by EPA within the time period set forth  
17 in the schedule.

18 3. Within fifteen (15) days of the effective date of this  
19 Order, Respondent shall submit to EPA a written plan ("O & M plan")  
20 for the operation and maintenance of the treatment process for  
21 the contaminated soil. At a minimum, the O & M plan shall include:  
22 (1) provisions for an operator to maintain the treatment process  
23 at least 20 hours per week, including but not limited to: irrigation  
24 of the site, maintenance of the plumbing integrity, the pumps and  
25 the treatment system and changing out the carbon filters as  
26 needed under the direction of the OSC; (2) site safety measures  
27 which meet EPA site safety requirements to protect on-site workers  
28 and the surrounding community; and (3) an implementation schedule.

1 4. Within five (5) days of EPA approval of the O & M plan,  
2 Respondent shall begin implementation of the plan. Respondent  
3 shall fully implement the O & M plan as approved by EF within  
4 the time period set forth in the schedule and under the direction  
5 of the OSC.

6 5. Within twenty (20) days of the effective date of this  
7 Order, Respondent shall submit to EPA a written plan ("monitoring  
8 plan") for the monitoring of the facility. At a minimum, the  
9 monitoring plan shall include: (1) monthly sampling and analysis  
10 of leachate, soil and groundwater; (2) quality assurance for all  
11 data generated by the monthly sampling and analysis program; (3)  
12 sampling and analysis methods to be carried out in accordance  
13 with EPA approved methods for hazardous waste testing in EPA SW 846,  
14 Test Methods for Evaluating Solid Waste US EPA 1986, 3rd Edition;  
15 and (4) an implementation schedule for the monitoring plan. The  
16 monitoring plan shall be implemented until EPA determines that  
17 cleanup levels have been achieved.

18 6. Within five (5) days of EPA approval of the monitoring  
19 plan, Respondent shall begin implementation of the plan.  
20 Respondent shall fully implement the monitoring plan as approved  
21 by EPA in accordance with the schedule and under the direction of  
22 the OSC.

23 7. Within thirty (30) days of the effective date of this  
24 Order, Respondent shall submit to EPA for approval a plan  
25 ("closure plan") for final site closure. At a minimum, the  
26 closure plan shall include site grading, site restoration,  
27 confirmatory soil testing and an implementation schedule for the  
28 final site closure. At a minimum, the confirmatory soil testing



1 shall address the following locations at the facility: (1) the  
2 spill area; (2) the area of excavation under the demolished  
3 office; (3) the treatment area; (4) the tank area; (5) the drum  
4 storage area and (6) any areas identified by the OSC as areas of  
5 potential contamination. Final site closure shall also include  
6 final disposal of all contaminated carbon filters and any other  
7 remaining contaminated soil or leachate or waste from the closure  
8 of the facility.

9 8. Within ten (10) days of notification by the EPA that the  
10 soil and leachate levels are below the levels designated by EPA,  
11 Respondent shall begin implementation of the cleanup plan. The  
12 OSC will inform the Respondent of the designated levels prior  
13 to the notification for implementation of closure. Respondent  
14 shall fully implement the final site closure plan as approved by  
15 EPA within the time period set forth in the schedule.

16 9. Within five (5) days of the effective date of this  
17 Order, the Respondent shall designate and provide EPA with the  
18 name and address of a Project Coordinator whose responsibilities  
19 will be to receive all notices, comments, approvals and other  
20 communications from EPA to the Respondent.

21 10. Within thirty (30) days of each sampling event required  
22 in the monitoring plan, Respondent shall submit a report of the  
23 monitoring results to EPA and DEP. At a minimum the monitoring  
24 report shall include a summary of the data, the field logs, and  
25 the raw data.

26 11. Within thirty (30) days of completion of all the  
27 activities outlined above, Respondent shall submit to EPA a  
28 report describing the facility closure actions.

Respondent is further ordered as follows:

VI. COMPLIANCE WITH APPLICABLE LAWS

In carrying out the terms of this Order, Respondent shall comply with all federal, state and local laws and regulations. All hazardous substances/wastes removed from the facility must be handled in accordance with Subtitle C and Subtitle D of the Resource Conservation and Recovery Act, 42 U.S.C. §6921 et seq., and the Nevada Revised Statutes Sections 400 et seq., and the regulations promulgated thereunder.

VII. SUBMITTALS

All submittals and notifications to EPA pursuant to this Order shall be made to:

Director, Toxics and Waste Management Division  
Environmental Protection Agency, Region 9  
215 Fremont Street  
San Francisco, California 94105

Copies of all submittals and notifications shall be sent simultaneously to:

Allen Biaggi  
Nevada Division of Environmental Protection  
201 South Fall Street  
Carson City, Nevada 89710

All approvals and decisions of EPA made regarding such submittals and notifications shall be communicated to Respondent by the Director, Toxics and Waste Management Division, U.S. Environmental Protection Agency, Region 9 or his designee. EPA will consult with Nevada DEP to ensure that the plans submitted pursuant to this Order are consistent with state and local requirements. No informal advice, guidance, suggestions or comments by EPA regarding reports, plans, specifications, schedules or any

1 other writing shall be construed to relieve the Respondent of  
2 their obligation to obtain such formal approvals as may be required  
3 herein.

#### 4 VIII. ACCESS

5 Respondent shall grant access to employees and authorized  
6 representatives of EPA and the Nevada Division of Environmental  
7 Protection to the facility. Nothing in this paragraph is intended  
8 to limit in any way the right of entry or inspection that EPA or  
9 other agency may otherwise have by operation of law.

#### 10 IX. ON-SCENE COORDINATOR

11 EPA has appointed an On-Scene Coordinator (OSC) who has  
12 the authority vested in the "On-Scene Coordinator" by 40 C.F.R.  
13 Part 300, et seq., published at 42 Fed. Reg. 31180 (July 16, 1982).  
14 That authority includes, without limitation, the right to: be  
15 on-site at all reasonable times; observe, take photographs and  
16 make other reports on the progress of the work as the OSC deems  
17 appropriate; and review records, files and documents relevant  
18 to the Order.

#### 19 X. ENDANGERMENT DURING IMPLEMENTATION

20 In the event that the Director, Toxics and Waste Management  
21 Division, EPA, Region 9 determines that any activities (whether  
22 pursued in implementation of or in noncompliance with this Order)  
23 or circumstances are endangering the health and welfare of people  
24 on the site or in the surrounding area or to the environment, the  
25 Director may order the Respondent to stop further implementation  
26 of this Order for such period of time as needed to abate the  
27 endangerment.

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1                                    XI. GOVERNMENT LIABILITIES

2            The United States Government shall not be liable for any  
3 injuries or damages to persons or property resulting from the  
4 acts or omissions of the Respondent, its employee , agents or  
5 contractors in carrying out activities pursuant to this Order,  
6 nor shall the Federal Government be held as a party to any  
7 contract entered into by the Respondent, or its agents in carry-  
8 ing out activities pursuant to this Order.

9                                    XII. PENALTIES FOR NONCOMPLIANCE

10           A willful violation or failure or refusal to comply with  
11 this Order, or any portion thereof, may subject you to a civil  
12 penalty of not more than \$25,000 per each day in which a violation  
13 occurs or such failure to comply continues, pursuant to the  
14 provisions of Section 106(b)(1) of CERCLA, 42 U.S.C. §9606(b)(1).  
15 Failure to comply with this Order, without sufficient cause, may  
16 also subject you to punitive damages in an amount up to three  
17 times the total of all costs incurred by the Government as a  
18 result of your failure to take proper action, pursuant to the  
19 provisions of Section 107(c)(3) of CERCLA, 42 U.S.C. §9607(c)(3).

20           EPA may take over the removal action at any time if EPA  
21 determines that Respondent is not taking appropriate action  
22 to mitigate the site hazard. In the event EPA assumes responsi-  
23 bility for the removal action, Respondent shall be liable for  
24 all costs incurred by EPA to mitigate the site hazard. EPA may  
25 order additional removal or remedial actions deemed necessary by  
26 EPA to protect the public health and welfare or the environment.

27                                    XIII. OPPORTUNITY TO CONFER

28           You may request a conference with the Director, Toxics and

1 Waste Management Division, EPA Region 9 or his staff to discuss  
2 the provisions of this Order. At any conference held pursuant to  
3 your request, you may appear in person or by counsel or other  
4 representatives for the purpose of presenting any objections,  
5 defenses or contentions which you may have regarding this Order.  
6 If you desire such a conference, you must make such request  
7 orally within 24 hours of receipt of this Order, to be immediately  
8 confirmed in a written request. Please make any such request to  
9 either of the contact persons listed below.

#### 10 XIV. PARTIES BOUND

11 This Order shall apply to and be binding upon the Respon-  
12 dent, its officers, directors, agents, employees, contractors,  
13 successors and assigns.

#### 14 XV. NOTICE OF INTENT TO COMPLY

15 Immediately upon receipt of this Order, Respondent shall  
16 orally inform EPA of its intent to comply with the terms of this  
17 Order. This shall be confirmed in writing within two (2) days  
18 of receipt of this Order. Failure to notify EPA of the  
19 Respondent's intent to comply will be construed by EPA as a  
20 refusal to comply.

#### 21 XVI. EFFECTIVE DATE

22 Notwithstanding any conferences requested pursuant to the  
23 provisions of this Order, this Order is effective upon receipt,  
24 and all times for performance shall be calculated from that date.

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1 It is so ordered on this 18<sup>th</sup> day of November, 1987.

2  
3 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

4  
5 By: Jeffrey Zelikson

6 JEFFREY ZELIKSON  
7 ACTING DIRECTOR, TOXICS & WASTE MANAGEMENT DIVISION  
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